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Supreme Court of the United States

OCTOBER TERM, 1947.

No. 403 99

ARMAND ROBICHAUD,

Petitioner,

v.

DANIEL J. BRENNAN, Judge of Essex County Court of
Common Pleas, State of New Jersey, *et al.*,

Respondents.

ON APPLICATION FOR CERTIORARI TO THE COURT OF ERRORS AND
APPEALS OF THE STATE OF NEW JERSEY.

REPLY BRIEF.

✓ THOMAS McNULTY,
Counsel for Petitioner.

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No. 1403.

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v.

DANIEL J. BRENNAN, Judge of Essex County Court of
Common Pleas, State of New Jersey, *et al.*,
Respondents.

REPLY BRIEF.

Statement.

The Opposition Brief first suggests a lack of jurisdiction. The contention is that "the only federal question that could possibly arise, was decided by construing Michigan criminal law in view of a liberal interpretation of the Congressional Act of 1793 (18 U. S. C. A. §662) necessitated by the language of the federal Constitution (Article 4, §2, Sub. 2)."¹

The second point is that in any event there has been a compliance with the federal statute.²

¹ Opposition Brief, p. 3.

² 18 U. S. C. A. §662.

I.

The judgment below of necessity involved a substantial and important constitutional and federal question.

At every opportunity in the three courts below and in this court, the petitioner has raised the federal question of whether or not there has been a compliance with the federal Constitution and the implementing federal statute.³

To meet the question thus raised the respondents take the position that the decision of the New Jersey courts that "the warrant is in effect, an indictment within the meaning of the extradition statute (and), is in compliance therewith • • •"⁴ rested on non-federal grounds. The argument is that this conclusion could have been reached solely by the construction of the state statutes involved, chiefly those dealing with Michigan criminal law.⁵ Consequently, the federal question though discussed was not necessary to a decision of the case.

The position urged by the respondents is based upon a misconception of the respective spheres of federal and state power. The states granted to the federal govern-

³ Essex County Common Pleas Record, p. 7; New Jersey Supreme Court, p. 157; New Jersey Court of Errors and Appeals, p. 214; in this court, p. 3 of Petition for Writ of Certiorari.

⁴ New Jersey Supreme Court, Record p. 208; aff'd *per curiam* without opinion, New Jersey Court of Errors and Appeals, 135 Law 472, 52 Atl. 2d 697.

⁵ An examination of the Michigan statutes annexed to both briefs and the record, pp. 190-193, will demonstrate that even as a question of state law the proposition that the warrant in this case is an indictment or equivalent thereto is unsound. The Michigan equivalent for an indictment is an information.

ment the right to legislate in extradition matters.⁶ Power not granted by the states to the federal government, or power granted but not yet exercised by the federal government, may not be exerted by the states in conflict with the provisions of the federal Constitution and the federal statutes designed to effectuate it. In matters covered by the Federal Extradition Statute, Congress has preempted the field.⁷

An alleged fugitive has a constitutional right to resist any extradition except one in compliance with the constitution and the federal statute implementing it.⁸ This is an important Constitutional and federal right of the petitioner here. It involves his right of personal liberty in its most complete sense. Since his right is federal he cannot be deprived of it either by state statutes or by the construction of state statutes.

The first questions to be resolved in any extradition case are whether the Constitution and the federal statute implementing it have been complied with. These questions precede and are paramount to any consideration of any state statute in aid of or supplementing the supreme law.⁹ The Federal Extradition Statute requires, for the lawful honoring of a requisition for extradition, either—

⁶ United States Constitution, Article 4, §2, Clause 2; *Kentucky v. Dennison*, 24 How. 66; *Prigg v. Pa.*, 6 Pet. 539; 10 L. Ed. 1060; *Taylor v. Taintor*, 16 Wall. 366, 21 L. Ed. 287; *Appleyard v. Mass.*, 203 U. S. 222, 27 S. Ct. 122, 51 L. Ed. 161; *Illinois, ex rel. McNichols v. Pearl*, 28 U. S. Sup. Ct. 58, 52 L. Ed. 121.

⁷ *Innes v. Tobin*, 240 U. S. 127, 36 S. Ct. 290, 60 L. Ed. 562; *Prigg v. Pa.*, *supra*; *Kentucky v. Dennison*, *supra*; *Mahon v. Justice*, 127 U. S. 700, 8 S. Ct. 1204, 32 L. Ed. 283; *Lascelles v. Georgia*, 148 U. S. 547, 13 S. Ct. 687, 37 L. Ed. 549.

⁸ *Hyatt v. New York*, 188 U. S. 691, 719, 23 S. Ct. 456, 47 L. Ed. 657; *Barton v. New York Central & H. R. R. Co.*, 245 U. S. 315, 38 S. Ct. 108; *South Carolina v. Bailey*, 289 U. S. 412, 53 S. Ct. 667; *Compton v. Alabama*, 214 U. S. 1, 29 S. Ct. 605, 53 L. Ed. 885, 16 Ann. Cas. 1098.

⁹ *State v. Parrish*, 242 Ala. 7, 5 So. (2d) 828.

1. A copy of an indictment; or
2. An affidavit charging the commission of a crime under the laws of the demanding state.

The petitioner complains of the fact that in this case neither of the alternative papers required by the federal statute were produced or authenticated. No narrow technical complaint based upon the sufficiency of the papers is being made. Compliance with the federal Constitution and the federal statute are the basic questions that must be resolved in every extradition case.

The solution of these federal questions cannot be avoided by interpretation or construction of state statutes. "The object of the present judiciary act was * * * to prevent courts of the several states from impairing or frittering away the authority of the federal government, by giving a construction to its statutes adverse to such authority."

Missouri v. Andriano, 138 U. S. 496, 499, 11 S. Ct. 387.

"The power given to the Supreme Court by this act of Congress was intended to protect the general government in the free and uninterrupted exercise of the powers conferred on it by the Constitution, and to prevent any serious impediment from being thrown in its way while acting within the sphere of its legitimate authority."

Bank v. Griffin, 14 Pet. 56, 58, 10 L. Ed. 352.

Since the statute here, the Uniform Extradition Act is in force in 32 states, the problem is an extremely important one, and likely to be recurring. It is a basic one of subordinating and adjusting the power of states to paramount

authority of the federal government. The federal and state courts are now in sharp and unseemly conflict on this point.¹⁰

The state's first duty is to obey the federal Constitution and the federal statutes enacted pursuant thereto. The state cannot so construe a State Extradition Statute and criminal statutes of a sister state so as to effectively circumvent, impair or fritter away the plain requirement of the Federal Extradition Act. The Federal Extradition Act requires a duly authenticated affidavit or an indictment.¹¹ In enacting these minimum requirements Congress has pre-empted the field and the federal statute and authority are controlling and exclusive of any power or authority reserved by the states.

The court should grant the writ because:

1. The judgment below deprives the petitioner of his Constitutional and federal right to remain in his domicile unless extradited in accordance with the provisions of the federal Constitution and the implementing federal statute.

2. The honoring of the extradition requisition in this case would deprive the petitioner of his personal liberty without due process of law and without compliance with the Federal Extradition Act.

3. The scope of the accommodation of the reserved power of the state to the federal exercise of power is presented.¹²

¹⁰ Cf. *U. S. v. Meyering*, C. C. A. 7th, 75 F. (2d) 716, holding a warrant insufficient after the Supreme Court of Illinois had held the same warrant sufficient. *People ex rel. v. Meyering*, 356 Ill. 210, 190 N. E. 261.

¹¹ 18 U. S. C. A. §662; *Roberts v. Reilly*, 116 U. S. 80, 6 S. Ct. 291, 29 L. Ed. 544.

¹² The Uniform Extradition Act which are the statutes of New Jersey (N. J. R. S. 2:185-9 *et seq.*) and Michigan (Mich. Stat. Ann. Cum. Supp. §28.1281-1 *et seq.*) involved in this case is in force in 32 states with substantially the same provisions as exist in New Jersey and Michigan, U. L. A. Vol. 9, 1947 Supp. 27.

4. The state court has undertaken to construe the Federal Extradition Statute in a manner not heretofore passed upon by this court. The matter is of such sufficient importance in the administration of criminal extradition as to warrant this court finally settling this question.¹³

II.

The federal statute was not complied with.

A.

The Warrant in This Case Is Not an Indictment.

The Opposition Brief repeatedly refers to "one man grand jury" "judge sitting as a one man grand jury" "grand jury warrant", etc. These characterizations appear on almost every page of the Opposition Brief. Neither the characterization nor the language appear in the Michigan statutes. It is a newspaper term. The Supreme Court of Michigan has demonstrated its inaccuracy.¹⁴

This is an effort to give the warrant issued by the Circuit Court Judge in this case a dignity and authority that it does not have in Michigan.

The requisition papers contain no authenticated affidavit as required by the federal statute.¹⁵ Those papers merely authenticate the warrant. Lacking the requisite affidavit, the Michigan authorities were driven to the claim that

¹³ See Note 12 *ante*.

¹⁴ *In re Slattery*, 310 Michigan 458.

¹⁵ This is required by the federal statutes as written and as construed. *Roberts v. Reilly*, 116 U. S. 80, 6 S. Ct. 291, 29 L. Ed. 544. *Ex Parte Hart* (C. C. A. 4th), 63 Fed. 249. Authentication is also required by Section 3 of the Uniform Extradition Act.

the warrant was an indictment or substantially so. The uncontradicted evidence in the case on the Michigan law is to the effect that the warrant authenticated here does not materially differ from the usual warrant for arrest.¹⁶ Such a warrant was rejected by the Circuit Court of Appeals, 7th Circuit, as a sufficient basis for extradition in *U. S. v. Meyering*, 75 F. (2d) 716. The court felt the authenticated warrant so patently defective that even though the charge was murder and the highest court of Illinois had refused to discharge the petitioner on a habeas corpus he had prosecuted through the state courts, it nevertheless discharged him.

An examination of the warrant will demonstrate that it is nothing more than a warrant for the apprehension of the accused and is not supported by the oath of anyone. An indictment is a formal accusation of crime under oath. Upon a criminal trial after indictment, the indictment constitutes the basis of the charge upon which the accused is tried. The statutes in the appendices to the petitioner's and respondent's brief demonstrate that under the laws of Michigan the accused is not tried upon the warrant that was authenticated here. These statutes support in every detail the testimony on behalf of the petitioner as to the Michigan law.¹⁷ After his arrest upon the warrant a formal charge by way of information is filed to which the accused pleads and upon which he is tried. In addition thereto the Michigan laws authorize a filing of an information without examination against a fugitive from justice.¹⁸

¹⁶ Record 190-193.

¹⁷ Record 190-193.

¹⁸ Public Laws of Michigan, §17256, pp. 33, 34 of Petitioner's Main Brief.

B.

**No Affidavit Complying with the Federal Statute
Was Produced.**

Before an affidavit can be used as a basis for extradition, it must be authenticated. Here, none of the affidavits are authenticated as required by the federal statute.¹⁰ In spite of the lack of authentication the respondent claims the affidavits in this case comply with the federal statute. No reason is assigned why they were not authenticated.

This is not a mere technical right but a substantial protection to the petitioner's constitutional right not to be extradited except in accordance with the provisions of the federal Constitution and implementing statute. No case can be found where neither a complaint supported by an affidavit nor an indictment or information was not authenticated. Here, neither of the alternative papers which is required by the federal statute was furnished and authenticated with the requisition.

Respectfully submitted,

THOMAS McNULTY,
Counsel for Petitioner.

¹⁰ This is required by the federal statutes as written and as construed. *Roberts v. Reilly*, 116 U. S. 80, 6 S. Ct. 291, 29 L. Ed. 544. *Ex Parte Hart* (C. C. A. 4th), 63 Fed. 249. Authentication is also required by Section 3 of the Uniform Extradition Act.